



VICTORIAN BAR

Candidate Number:

ENTRANCE EXAM

VICTORIAN BAR READERS' COURSE

7 MAY 2019

EXAM DURATION: **3 hours** writing time
 30 minutes perusal time (prior to commencement of exam)

INSTRUCTIONS TO CANDIDATES:

- 1) During the exam, you must not be in possession of anything other than writing implements, this exam script and the hard copies of the Reading Guide and examinable excerpts of legislation that have been provided. You are not permitted to have in your possession any other paper, notes, books, electronic devices, mobile phones, pencil cases or any other items that have not been specifically authorised by the Chief Examiner and/or Invigilators of the exam. Any item on your person, on your chair, or on your desk are deemed to be in your possession.
- 2) Your Candidate Number (but not your name) appears at the top of this page. Your Candidate Number represents your unique identifier for the purposes of this exam. You have previously been advised in writing of the Candidate Number which has been assigned to you. Please ensure that the Candidate Number above matches the Candidate Number which has been assigned to you. You **must not write your name** on any page in this exam script.
- 3) This exam tests your knowledge and understanding of rules of **Civil Procedure, Criminal Procedure, Evidence** and **Legal Ethics**. The exam consists of two parts – Part A and Part B. You **must answer all questions (and sub-questions)** in both Parts of the exam. The total number of marks allocated to questions in the exam is 100, so that the maximum score attainable by any candidate is 100. A total mark of 75 or more is required to pass the exam.
- 4) **Part A** contains 15 questions (Questions 1 to 15) and is worth a total of 50 marks. Part A commences with a preliminary statement of facts giving rise to a hypothetical **criminal proceeding**. Questions 1 to 15 then follow. In answering Part A, you should assume that all

questions are referable to the preliminary statement of facts. Each question posed in Part A informs you of the following: (i) whether you are being tested on rule(s) of criminal procedure, evidence or legal ethics (but note paragraph 6 of these instructions below); and (ii) the total number of marks allocated to the question. The total number of marks allocated to each subject area in Part A is: Criminal Procedure (22 marks), Evidence (22 marks) and Legal Ethics (6 marks).

- 5) **Part B** contains 16 questions (Questions 16 to 31) and is worth a total of 50 marks. Part B commences with a preliminary statement of facts giving rise to a hypothetical **civil proceeding**. Questions 16 to 31 then follow. In answering Part B, you should assume that all questions are referable to the preliminary statement of facts. Each question posed in Part B informs you of the following: (i) whether you are being tested on rule(s) of civil procedure, evidence or legal ethics (but note paragraph 6 of these instructions below); and (ii) the total number of marks allocated to the question. The total number of marks allocated to each subject area in Part B is: Civil Procedure (20 marks), Evidence (18 marks) and Legal Ethics (12 marks).
- 6) Although each question is designated as either ‘Criminal Procedure’, ‘Civil Procedure’, ‘Evidence’ or ‘Ethics’, you may refer to legal rules and principles outside the designated subject area if you consider these to be relevant in answering the question. With some questions, it may be necessary to do so in order to completely answer the question.
- 7) You must write your answers in the writing space provided after each question. The reverse side of each page in this exam script contains further writing space if required. Further additional blank writing pages have been provided at the end of this exam script.
- 8) In the case of multi-choice questions, you must simply circle the answer(s) you consider to be correct. Some multi-choice questions are worth 1 mark where **only one answer** may be circled, and other multi-choice questions are worth 2 marks where **two answers** may be circled. If you circle more than one answer for a 1-mark multi-choice question, or more than two answers for a 2-mark multi-choice question, a score of **zero marks will be recorded** for that question. If you wish to change your answer(s) to a multi-choice question, you will not be penalised for doing so provided that the change is effected in such a manner that clearly indicates your intended final answer(s).
- 9) Your attention is also drawn to the following:
 - i) If an application of state law is necessary in answering any question, you should assume that the law of Victoria applies.

- ii) In answering questions, you are not required to cite section numbers or case names unless the question specifically directs you to do so. You may restate principles of law or rules in your own words. A significant degree of latitude is given to you paraphrasing rules and principles.
 - iii) The standard of expression, spelling, punctuation, grammar, and conciseness will be taken into account in the assessment of your answers. Please take care to ensure your writing is legible.
- 10) It is suggested that you allocate time spent on each question proportionate to the number of marks allocated. The table below is provided to assist you in planning time (calculated on the basis of 180 minutes total writing time).

**TABLE – SUGGESTED TIME SPENT ANSWERING
QUESTION BASED ON MARKS ALLOCATED**

Marks	Time (approx.)
1 mark	no more than 2 minutes
2 marks	3½ minutes
3 marks	5½ minutes
4 marks	7 minutes
5 marks	9 minutes
10 marks	18 minutes

- 11) You are **not permitted to remove this exam script** from the examination room.

PART A (Questions 1 to 15) – Candidates are required to answer ALL questions in Part A.

Assume the following prosecution summary of alleged facts relates to all questions in Part A.

The Accused is Sean FINNIGAN and is 45 years old (date of birth 21/01/74).

Scarlett JONES and Lucy JONES are sisters. They are the owners and operators of a small kennel in Brighton, Victoria trading under the name of ‘Winter Glade Kennels’. They breed a very rare type of dog known as the Shih Terridor. The Shih Terridor is a cross between the relatively common dog breeds of Shih Tzu, Yorkshire Terrier and the Labrador Retriever. Its genetic make-up is very specific. A ‘true’ Shih Terridor comprises exactly 68% pure Shih Tzu, 23.5% pure Yorkshire and 8.5% pure Labrador Retriever. This precise combination produces a breed of dog that is very small, extremely affectionate towards humans, highly intelligent, independent and comfortable with being alone for hours at a time. The Shih Terridor has the perfect temperament for babies, toddlers, adults and strangers alike. It rarely barks and, when it does, the bark is barely audible. It does not require walking. The average lifespan of a purebred Shih Terridor is 14 years. For all these reasons, the Shih Terridor is highly sought after as a pet around the world. Demand for Shih Terridor puppies is especially high in Asia. Reputable breeders typically sell healthy Shih Terridor puppies at between \$80,000 and \$120,000 per puppy, with most buyers of Australian-bred Shih Terridors located in China.

The building from which Winter Glade Kennels operates is a small pre-fabricated structure made to specification for housing up to 20 Shih Terridors at any one time (‘the kennel’). The kennel is located at the back of the property where Scarlett JONES lives with her two teenage children. The address of the residential property (and the kennel) is 32 Seashells Grove, Brighton. The kennel is located approximately 30 metres west of the residential dwelling. The kennel is secured with a 24-hour electronic monitoring system which includes CCTV cameras located inside and outside the kennel that ‘live stream’ footage to a secure internet site that is only accessible by password. It also includes a security code door entry and lock system and an alarm system. The system is continuously monitored by Securicorp Systems Pty Ltd (‘Securicorp’), the company that supplied and installed the security system in January 2016.

On Tuesday, 30 January 2018 at approximately 2:00 AM, the Accused, together with Co-Accused Lily HANOVER and Jaden VINCENT, attended 32 Seashells Grove, Brighton. They made their way to the back of the property and by-passed the security system to gain access to the kennel. Once inside, they took seven Shih Terridor puppies that were six weeks old. The seven puppies had been sold

under contracts to various clients of Winter Glade Kennels and were due to be despatched to China on 2 February 2018. The puppies had each sold for \$110,000 bringing the total value of the puppies to \$770,000. The puppies were taken by the Accused and Co-Accused without the permission of the owners of Winter Glade Kennels.

As a result of information received, on 19 February 2018 Victoria Police obtained and executed a search warrant at a warehouse located at 4 Freight Road, Tullamarine. The seven puppies were located in a consignment crate on the ground floor of the premises. Co-Accused HANOVER and VINCENT were at the premises at the time the search warrant was executed. They were arrested and conveyed to Caulfield Police Station. They both made ‘no comment’ interviews before being charged in relation to the theft and burglary that had occurred at Winter Glade Kennels on 30 January 2018.

The seven puppies were examined by a registered veterinarian at 4 Freight Road, Tullamarine and were found to be in a poor state of health due to malnourishment. Five of the puppies were assessed as being unlikely to survive and were euthanased with the consent of the owners of Winter Glade Kennels. The surviving two puppies were returned to Winter Glade Kennels.

As a result of further information received a year later, on 3 March 2019 Victoria Police attended 2/33 Kilgour Avenue, Clayton, being the last known address of the Accused. The Accused identified himself and he was then arrested on suspicion of having been involved in the theft and burglary that had occurred at Winter Glade Kennels on 30 January 2018. He was conveyed to Caulfield Police Station where he made a ‘no comment’ interview following which he was released on charge and summons.

The Accused has been charged with several offences, the most serious of which are theft and burglary under ss 74 and 76 of the *Crimes Act 1985* (Vic), which provide:

74 Theft

- (1) A person guilty of theft is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

...

76 Burglary

- (1) A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent—
(a) to steal anything in the building or part in question; or

...

which is punishable with imprisonment for a term of five years or more.

...

- (3) A person guilty of burglary is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

Candidate Number:

The first page of the charge sheet and summons that was served on the Accused is reproduced on the next page.

FORM 3

Magistrates' Court Criminal Procedure Rules 2009

**Charge-Sheet and
Summons**

(Copy for the Accused)

To the Accused	Sean Kane FINNIGAN 2/33 Kilgour Avenue Clayton VIC 3168	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Date of Birth 21/11/1974
	You have been charged with an offence. Read these pages to see what you must do.	Registration No.	State
		Licence No.	.State

DETAILS OF THE CHARGE AGAINST YOU

What is the charge? (Description of offence)	1 The accused did, at Brighton, steal some puppies worth a total of \$770,000.		
Under what law?	<input checked="" type="checkbox"/> State <input checked="" type="checkbox"/> Act <input type="checkbox"/> Other-specify <input type="checkbox"/> C'wealth <input type="checkbox"/> Reg.	Act or Regulation No. <i>Crimes Act 6231/58</i>	Section or Clause (Full Ref.) 73
Are there more charges?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – See Continuation of Charges attached		
Request for Committal Proceedings	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		
Type of offence	<input type="checkbox"/> Summary Offence (You should go to Court) <input checked="" type="checkbox"/> Indictable offence (You must go to Court)		
Who filed the charge-sheet(s)? (informant)	Joanne HARRINGTON	Email: jharrington@police.vic.gov.au	
Agency and Address	Caufield Police Station 289 Hawthorn Road Malvern VIC 3162	Phone: (03) 9876 5432 Fax: (03) 1234 5678 Ref: PMZ9732/21	
Signature of Informant	<i>J Harrington</i>	Date: 3 March 2019	
Charge filed at	MELBOURNE (Venue)	on	(Date)

WHERE WILL THE CASE BE HEARD

Where you must go	The Magistrates' Court of Victoria at MELBOURNE		
Address	233 William Street, Melbourne VIC 3000	Phone: (03) 9628 7777	
When	Time 10.00am	Day 7 TH	Month MAY Year 2019

DETAILS ABOUT THIS SUMMONS

Issued at	Caufield Police Station 289 Hawthorn Road Malvern VIC 3162	Date: 3 March 2019
Issued by (Signature)	<i>J Harrington</i>	<input type="checkbox"/> Registrar <input type="checkbox"/> Magistrate <input type="checkbox"/> Public Official <input checked="" type="checkbox"/> Member of Police Force <input type="checkbox"/> Prescribed Person

QUESTION 1

<p>Criminal Procedure: The proceeding against the Accused in this matter commences at what point in time?</p> <p>Your answer: (circle ONE)</p> <p>[1 mark]</p>	<p>a) When the Co-Accused are arrested at Tullamarine on 19 February 2018.</p> <p>b) When the Accused is arrested at Clayton on 3 March 2019.</p> <p>c) When the charge and summons is signed by Joanne Harrington.</p> <p>d) When the Accused is handed the charge and summons.</p> <p>e) When the matter is first heard on 7 May 2019.</p> <p>f) When the Director of Public Prosecutions files the indictment (on a date yet to be determined).</p>
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QUESTION 2

Criminal Procedure: Refer to the charge and summons that has been reproduced on the previous page. The Accused has come to you, as Counsel, for advice. He hands you the charge and summons and states: *‘Can I try to get out of this on a technicality? The charge says nothing. It doesn’t even say who I’ve apparently stolen these puppies from and how many puppies I stole, and they’ve got my date of birth completely wrong too. And this happened more than 12 months ago. Isn’t there a statute of limitations that stops them from charging me after 12 months? This case is joke!’*

Does the Accused’s complaint have any merit? Identify any other defects in how the charge is expressed and explain how the Prosecutor could seek to have these rectified when the matter is first heard on 7 May 2019. [4 marks]

Answer: _____

QUESTION 4

<p>Criminal Procedure: Having regard to the contents of the Charge-Sheet and Summons alone (and assuming any perceived defects in it are cured), in what court's jurisdiction is the Prosecution likely to seek to have the charge against the Accused ultimately determined?</p>	
<p>Your answer: (circle ONE)</p>	<ul style="list-style-type: none">a) Magistrates' Court's summary jurisdiction.b) Magistrates' Court's indictable jurisdiction.c) County Court's summary jurisdiction.d) County Court's indictable jurisdiction.e) Partly in the Magistrates' Court's summary jurisdiction and partly in the County Court's indictable jurisdiction.f) Supreme Court's inherent jurisdiction.
<p>[1 mark]</p>	

QUESTION 5

i. Criminal Procedure: The offences under ss 74 and 76 of the *Crimes Act 1958* are indictable offences that may be heard and determined summarily. What are the essential points of distinction between summary offences, indictable offences and indictable offences that may be heard and determined summarily? [2 marks]

Answer: _____

ii. Criminal Procedure: Identify and explain TWO (2) practical *advantages* and TWO (2) practical *disadvantages* for an accused in any criminal proceeding having a matter determined summarily as opposed to it being determined in the indictable jurisdiction. **[2 marks]**

Answer: _____

iii. Criminal Procedure: What is a ‘committal’ hearing? Explain the procedures associated with a committal hearing and on what basis an accused may be ‘committed to stand trial’. Why is the Accused in this case more likely to be committed to stand trial rather than having his case determined summarily? **[3 marks]**

Answer: _____

QUESTION 6

<p>Criminal Procedure: Assuming the Accused is committed to stand trial, how many people are likely to constitute the jury in this case?</p>	
<p>Your answer: (circle ONE)</p>	<p>a) 0 (it will be tried without a jury). b) 6. c) 10. d) 11. e) 12. f) 13.</p>
<p>[1 mark]</p>	

For the purpose of answering further questions in Part A, assume the following additional facts:

The matter has been set down for trial. The Accused has instructed Defence Counsel that he denies all involvement in the alleged burglary and theft, but otherwise does not deny that it occurred. Defence Counsel has identified several matters relating to the admissibility of the evidence proposed to be adduced by the Prosecution in the course of the trial. These objections include:

- i. an objection to the admissibility of any evidence that discloses the value of the puppies being \$110,000 per puppy (and the total value of \$770,000) on the basis that ‘*such evidence is not relevant or, alternatively, the probative value of the evidence does not outweigh the unfair prejudice that would be caused to the Accused if the Prosecution is permitted to adduce it*’ (‘the **Relevance Objection**’);
- ii. assuming the Relevance Objection is rejected by the trial judge, an objection to the admissibility of the seven contracts of sale between Winter Glade Kennels and each of its seven Asian-based clients, on the basis that ‘*the value of the puppies specified in each contract*

For the purpose of answering further questions in Part A, assume the following additional facts:

The case against the Accused is primarily based on the evidence proposed to be adduced by the Prosecution from witness (and Co-Accused) Lily HANOVER. Ms Hanover was also charged with theft and burglary. Although she made a ‘no comment’ interview, the case against her was easily established because she was caught in possession of the puppies. She was also an employee of Securicorp at the time of the Winter Glade Kennels burglary and theft. The evidence establishes that on 25 January 2018, while working her shift as a systems monitoring officer at Securicorp’s headquarters in Essendon, Ms Hanover accessed Winter Glade Kennels’ electronic client file for no legitimate purpose. The file contained the passwords that allowed the offenders to disable Winter Glade Kennels’ security system and gain access to the kennel without being detected. Although Ms Hanover’s involvement in the offending was clearly established, Police concluded that neither Ms Hanover nor Mr Vincent had the connections that would allow them to sell the puppies on the black market. Eventually, Police were led to suspect the Accused’s involvement, who did have such connections. However, Ms Hanover and Mr Vincent both refused to implicate the Accused, at least initially.

Ms Hanover was on bail awaiting her own committal hearing scheduled to take place in early November 2018. On 28 October 2018, Detective Sergeant Richard LONG (‘DS Long’) attended Ms Hanover’s private residence in Essendon to make further inquiries of her without the knowledge of her solicitors. Without formally cautioning her, DS Long applied significant pressure on Ms Hanover to disclose the identity of any further accomplices involved in the theft and burglary at Winter Glade Kennels. He told her, *‘if you don’t co-operate you’ll be going inside for a very long time, and you’ll have to get a girlfriend in jail if you don’t wanna to get hurt or killed.’* The pressure was too much for Ms Hanover. She buckled and immediately disclosed the following:

- Ms Hanover had met the Accused at a bar in Melbourne in March 2017. They developed an intimate relationship.

- The Accused came up with the idea of stealing the puppies after Ms Hanover mentioned Winter Glade Kennels to the Accused within the context of talking about Securicorp's 'unusual' clients.
- The Accused was present and effectively 'in charge' of the Co-Accused when they stole the puppies from the kennel on 30 January 2018.
- Ms Hanover was not aware of who the puppies were going to be sold to after they stole them, but she had agreed to watch them with Mr Vincent at the Tullamarine premises where they were found.
- Ms Hanover had refused to comment earlier because the Accused had threatened to kill her if she spoke to police.

The conversation was secretly recorded without Ms Hanover's knowledge. Upon advice from her own lawyer, Ms Hanover subsequently made a formal Police statement (this time, after being formally cautioned) detailing the Accused's involvement in the theft and burglary. She undertook to give evidence for the Prosecution against the Accused. All of this was done for the express purpose of Ms Hanover securing a significant reduction in her sentence following a plea of guilty. It worked. As a result of her undertaking to co-operate with Police in relation to the Accused's pending trial, Ms Hanover received a significant discount on being sentenced following a plea of guilty. On 15 March 2019, she was convicted and sentenced to a serve a community corrections order for a period of 3 years.

While Ms Hanover has been subpoenaed to attend the trial of the Accused as a Prosecution witness, she failed to answer the subpoena on the first day of trial. Police are unable to locate her and suspect that she no longer wishes to co-operate with the prosecution of the Accused.

The Prosecutor now proposes to adduce both the covert recording and the formal police statement, submitting that it is '*admissible as an exception to the hearsay rule in the proceeding against the Accused,*' in the absence of Ms Hanover attending court to give the evidence in person. Defence Counsel objects on the following articulated bases:

- the evidence is not admissible as hearsay, even as an exception to the hearsay rule ('the **Hearsay Exception Objection**');
- alternatively, the evidence is not admissible as it constitutes an '*unauthorised admission contrary to s 87 of the Evidence Act 2008*' ('the **Section 87 Objection**');
- alternatively, the evidence is not admissible because it was '*obtained in an oppressive manner contrary to s 84 of the Evidence Act 2008*' ('the **Section 84 Objection**');
- alternatively, the evidence is not admissible because it was obtained '*improperly, illegally or in consequence of impropriety or illegality*' ('the **Improperly Obtained Evidence Objection**').

PART B (Questions 16 to 31) – Candidates are required to answer ALL questions in Part B.

Refer to the facts in Part A and assume the following further facts relate to all questions in Part B.

Forensic testing conducted by Police on the deceased Shih Terridor puppies disclosed certain genetic anomalies which prompted the forensic testing team to send tissue samples for further genetic analysis to a laboratory in the United States. That laboratory, Sequential Genetic Testing Laboratories, Inc. (**‘Sequential’**), provided its report to Police on 15 January 2019. The report suggested that a certain gene, IGF-2A, may have been deleted from the puppies’ DNA *‘as a result of human intervention and unknown technical methods of genetic manipulation ... although we cannot exclude the possibility that the missing gene IGF-2A may be the result of random and spontaneous gene mutation that was inherited.’* If the puppies’ genes had been deliberately altered, an indictable offence would probably have been committed under the *Gene Technology Act 2000* (Cth). However, due to the lack of confidence in the conclusion contained in Sequential’s report, Police did not make any further inquiries in relation to this issue.

If the suggestion contained in Sequential’s report is correct, the person most likely responsible for the genetic manipulation of the Shih Terridor puppies’ DNA is Scarlett JONES (**‘Scarlett’**). Scarlett holds a PhD in biochemical engineering, awarded by Johns Hopkins University in 2011. The subject of her doctoral thesis concerned the modification of insulin-generating genes of the Yorkshire Terrier. Scarlett is also primarily responsible for the breeding of the puppies at Winter Glade Kennels while her sister, Lucy JONES (**‘Lucy’**), handles the ‘business’ aspect.

The two surviving Shih Terridor puppies were unable to be sold due to long-term health issues arising from their severe malnourishment. None of seven original purchasers of the stolen puppies wished to proceed with their contracts. On 1 March 2019, Scarlett and Lucy lodged a formal claim with their insurance company, JIW Insurance Ltd (**‘JIW’**), for indemnity in the sum of \$770,000 pursuant to an insurance policy they have had in place for more than seven years. The insurance policy indemnified the sisters from any losses arising from the theft, destruction or devaluation of the puppies arising from ill-health due to criminal acts of third parties. On 18 March 2019, the sisters were notified by letter from JIW that their claim was rejected on the basis that *‘JIW has reasonable grounds to conclude that unlawful genetic modifications were made to the puppies, contrary to the Gene Technology Act 2000 and clause 13.18 of the policy’*. Clause 13.18 of the insurance contract permits JIW to deny the policy holder’s claim if *‘there are reasonable grounds to believe that the policy*

holder has deliberately modified the genetic make-up of the insured property contrary to any law of Australia.’ The sisters were shocked at what the letter from JIW insinuated.

On 19 March 2019, the sisters received another letter from the Dog Breeders Association of Australia, Incorporated (‘**DBAA**’), an organisation that the sisters have both been members of since establishing Winter Glade Kennels in 2009. The letter stated that they are ‘*both hereby expelled from DBAA for having engaged in reprehensible conduct that is likely to bring DBAA into disrepute, namely the deliberate genetic modification of Shih Terridor embryos for commercial purposes.*’ Both sisters are shocked at the letter and are at a loss as to the allegations made by DBAA.

Scarlett and Lucy have together decided to institute proceedings in the Supreme Court of Victoria against JIW, alleging breach of the insurance contract, and seeking indemnity in the sum of \$770,000 (‘**the JIW claim**’). They have also decided to sue DBAA, alleging breaches of a variety of clauses of DBAA’s constitution relating to the sisters’ purported expulsion from the organisation and for breaching an implied obligation to accord them natural justice (‘**the DBAA claim**’). The DBAA claim is also founded in contract law on the basis that the sisters’ relationship with the organisation is founded under a contract of membership with DBAA. In relation to the DBAA claim, the sisters seek an order that they specifically have their membership re-instated and a declaration that their purported expulsion was unlawful.

QUESTION 15

Civil Procedure: Scarlett and Lucy have chosen to commence their proceedings by filing *writs* rather than *originating motions*. On the given facts, what considerations would have impacted on their decision to commence proceedings by writ rather than by originating motion? [3 marks]

Answer: _____

- Securicorp, alleging breach of contract and negligence for allowing their security system to be compromised (this is effectively a ‘safety net’ claim to recover the \$770,000 in the event that JIW is found by the court to be entitled to deny the insurance claim).

QUESTION 16

Civil Procedure:	Which TWO of the following are not overarching obligations in civil proceedings, as set out in Part 2.3 of the <i>Civil Procedure Act 2010</i> ?
<i>Your answers:</i> (circle TWO)	a) to avoid making frivolous claims. b) to act impartially. c) to act honestly. d) to co-operate with other parties in connection with the proceeding. e) to minimise litigation risk for all parties in the proceeding. f) to use reasonable endeavours to resolve the dispute.
[2 marks]	

QUESTION 17

Civil Procedure:	Which TWO features of pleadings are not required to be included in the Plaintiff’s Statement of Claim?
<i>Your answers:</i> (circle TWO)	a) Material facts upon which the Plaintiff relies in support of its causes of action. b) Material witnesses upon whose evidence the Plaintiff intends to rely. c) Pleadings must be type-written and double-spaced. d) Pleadings must be divided into paragraphs and numbered consecutively. e) Specification of any statutory provisions relied upon in its claim. f) Statement of relief/remedy sought.
[2 marks]	

QUESTION 18

Civil Procedure: Lucy and Scarlett are conscious of costs and would prefer to have all of their claims heard together. Is it possible for all of their claims against JIW, DBAA, Victoria Police, Sequential and Securicorp to be heard and determined together in the same Supreme Court proceeding? Explain. **[3 marks]**

Answer: _____

For the purposes of answering further questions in Part B, assume the following additional facts:

Victoria Police, Sequential and Securicorp have been joined to the proceeding so that all claims will be determined together.

QUESTION 19

<p>Ethics:</p> <p><i>Your answers: (circle TWO)</i></p> <p>[2 marks]</p>	<p>Identify TWO situations in which Counsel must refuse to act for the Plaintiffs in this matter?</p> <ul style="list-style-type: none">a) Counsel is a non-executive director of Securicorp.b) Counsel owns a small parcel of shares (worth approximately \$2,000) in JIW.c) Counsel has no experience in commercial matters of this complexity and magnitude (she has only ever acted in criminal matters and personal injury claims). It will involve twice as much work for her as it would for more experienced commercial counsel.d) Counsel’s husband, a psychologist, is currently treating Joanne Harrington, a principal witness in Victoria Police’s defence, for a major depressive and anxiety disorder. He has mentioned this to her at home in breach of his own professional obligations of confidentiality.e) The solicitor acting for Sequential is a friend of Counsel. It is likely the solicitor will give evidence for Sequential and Counsel will have to engage in a line of cross-examination that attacks the solicitor’s credibility as a witness.f) Counsel believes the Plaintiffs are likely to lose the case.
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QUESTION 20

Ethics: In what circumstances can counsel represent two parties in a proceeding? Having regard to the information available, is it possible that Scarlett and Lucy could be represented by one barrister, and all Defendants represented by another? Explain. **[3 marks]**

Answer: _____

QUESTION 26

<p>Evidence:</p>	<p>Which of the following questions most accurately reflects the correct legal test under the <i>Evidence Act 2008</i> for the ‘relevance’ of evidence in a civil proceeding?</p>
<p>Your answer: (circle ONE)</p>	<p>a) ‘<i>Is the evidence material to any issue raised in the pleadings?</i>’</p> <p>b) ‘<i>To what extent is the evidence capable of materially affecting the determination of a fact in issue?</i>’</p> <p>c) ‘<i>Could the evidence, assuming it is accepted, be relied upon by a jury properly instructed in determining a fact in issue?</i>’</p> <p>d) ‘<i>Could the evidence, assuming it is accepted, rationally affect the determination of the existence of a fact in issue?</i>’</p> <p>e) ‘<i>Does the evidence have significant probative value?</i>’</p>
<p>[1 mark]</p>	<p>f) ‘<i>Does the evidence have sufficient probative value?</i>’</p>

QUESTION 27

<p>Evidence:</p>	<p>If Defence Counsel fails to comply with the rule in <i>Browne v Dunn</i>, non-compliance with the rule might be remedied by the operation of which provision of the <i>Evidence Act 2008</i>?</p>
<p>Your answer: (circle ONE)</p>	<p>a) Section 9.</p> <p>b) Section 12.</p> <p>c) Section 38.</p> <p>d) Section 46.</p> <p>e) Section 135.</p>
<p>[1 mark]</p>	<p>f) Section 189.</p>

For the purposes of answering further questions in Part B, assume the following additional facts:

QUESTION 29

Evidence: Refer to the previous question. The trial judge requires that the admissibility of Dr Smythe’s evidence ‘*be resolved by way of a voir dire*’. What is a ‘voir dire’? Explain how a voir dire process could resolve the issue in this case. **[2 marks]**

Answer: _____

For the purposes of answering further questions in Part B, assume the following additional facts:

Dr Smythe’s evidence is ruled admissible. In the course of giving evidence at trial, Dr Smythe states in examination-in-chief, ‘*I just want to clarify, that I now think it’s 95% probable that the missing gene IGF-2A was removed in a laboratory by scientific techniques...*’.

In cross-examination, the following exchange takes place:

Plaintiffs’ Counsel: You appear to have changed your opinion, doctor?

Dr Smythe: I beg your pardon?

Candidate Number:

END OF PART B

End of examination

